

**A RESOLUTION BY COMMUNITY DEVELOPMENT/
HUMAN RESOURCES COMMITTEE**

05- R -1064

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN APPROPRIATE CONTRACTUAL AGREEMENT WITH THE ARTIST JOSEPH PERAGINE FOR THE PURPOSE OF COMMISSIONING ARTWORK OF THE ARTIST'S OWN DESIGN FOR THE ATLANTA CITY COURT, PHASE II, IN AN AMOUNT NOT TO EXCEED \$35,000.00, ON BEHALF OF THE DEPARTMENT OF PARKS, RECREATION AND CULTURAL AFFAIRS, BUREAU OF CULTURAL AFFAIRS; AND FOR OTHER PURPOSES.

Whereas, the City of Atlanta supports the creation of public art programs by allocating certain funds for the establishment of artworks in public places and authorizing the making of payments for the design, execution, fabrication, transportation and installation of works of art and the support of an artist-selection process; and

Whereas, the City of Atlanta one percent-for-art funds program helps to beautify the City and provide opportunities for citizens to enjoy quality art and the art program also helps to make Atlanta a better place to live; and

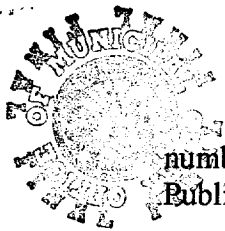
Whereas, funds have been allocated for the selection, purchase and placement of artwork of the Artist's own design for the work at the Atlanta City Court, Phase II project to finance the design, construction and lease-purchase of the Atlanta City Court of which one percent for Municipal Art was set aside for expenses associated with funding Public Art and the administration of Public Art projects and this agreement in an amount not to exceed \$35,000.00, to be paid from account number 3P02 576001 N41S0624QNAO with this designated Artist will provide a unique piece of Artwork at the Atlanta City Court; and

Whereas, the Artist, Joseph Peragine was selected by the City, through the procedures duly adopted by the Department of Parks, Recreation and Cultural Affairs, Bureau of Cultural Affairs, to design, fabricate, transport, execute and install the work for the site at the Atlanta City Court, Phase II project; and

Whereas, both parties wish to promote and maintain the integrity and clarity of the Artist's ideas and statements, as represented by the work.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, that the Mayor be and is hereby authorized to enter into a contractual agreement with the Artist, Joseph Peragine for the purpose of commissioning artwork of the Artist's own design at the Atlanta City Court, Phase II project, on behalf of the Department of Parks, Recreation and Cultural Affairs, Bureau of Cultural Affairs.

BE IT FURTHER RESOLVED, that the amount of this contractual agreement for the commission of artwork is not to exceed \$35,000.00, and is to be paid from account



number 3P02 (Trust) 576001 (Art) N41S0624QNAO (Maintenance and Conservation Public Art).

BE IT FURTHER RESOLVED, that the City Attorney be and is hereby directed to review an appropriate contractual agreement, herewith attached, and identified as "Exhibit A" for execution by the Mayor, to be approved as to form.

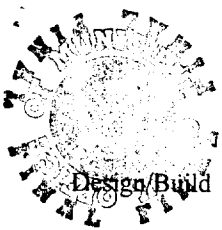
FINALLY BE IT RESOLVED, that this contractual agreement shall not become binding on the City, and the City shall incur no liability upon same, until such contractual agreement has been executed by the Mayor and delivered to the Artist, Joseph Peragine.

A true copy,

Rhonda Daughlin Johnson
Municipal Clerk, CMC

ADOPTED by the Council
APPROVED by the Mayor

June 20, 2005
June 23, 2005



STATE OF GEORGIA
COUNTY OF FULTON

AGREEMENT FOR COMMISSION OF PUBLIC ART WORK

THIS AGREEMENT, is entered into this ____ day of _____, 2005, by and between the City of Atlanta (the "City"), acting by and through the Department of Parks, Recreation and Cultural Affairs, Bureau of Cultural Affairs and Joseph Pergine (the "Artist") residing at 1511 Council Bluff Drive, Atlanta, Georgia 30345 (collectively the "Parties" or at times singularly "Party").

WITNESSETH:

WHEREAS, the City recognizes that public art helps to beautify the City, provides opportunities for citizens of all socioeconomic brackets to enjoy quality art and helps to make Atlanta a better place to live; and

WHEREAS, the City has created a public art program whereby one and one-half percent of the cost of all applicable City projects is allocated for the establishment of artworks in public places; and


WHEREAS, the City has determined that it would like to place a piece of artwork at the location of The City Court of Atlanta (the "Site"); and

WHEREAS, pursuant to Ordinance number 01-0-0995 adopted by the Atlanta City Council on July 16, 2001 and approved by the Mayor on July 24, 2001 and attached hereto as Exhibit A, the City has allocated funds for the design, purchase and placement of artwork at the Site; and

WHEREAS, the City has conducted an artist selection process to the City-approved Public Art Master Plan ("PAMP"), and as a result has chosen the Artist to design the artwork for the Site (the "Work"); and

WHEREAS, the Artist has submitted a preliminary design of the Work to the City that is attached hereto as Exhibit C ("Preliminary Design"); and

WHEREAS, the City has assigned a committee of stakeholders (the "Stakeholder Committee") to review and comment on the Preliminary Design in accordance with PAMP; and

 WHEREAS, by Resolution adopted by the Atlanta City Council, , on 200__, and approved by the Mayor on ____, 200__, and attached hereto as Exhibit B the Mayor on behalf of the City is authorized to enter into an appropriate contractual agreement with the Artist to design the Work whereby said agreement shall be in an amount not to exceed \$35,000.

NOW, THEREFORE, the City and the Artist, for and in consideration of the mutual terms and conditions hereinafter set forth hereby agree as follows:

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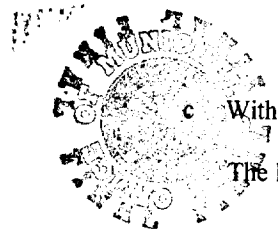
ARTICLE 1. SCOPE OF SERVICES

1.1 General

- a. The Artist shall create a complete design of the Work (the "Design"), which shall include but not be limited to the artistic expression, scope, design, color, and material, to be utilized in the Work.
- b. The Artist is required to have a Georgia certified engineer review and seal the Design drawings for the fabrication and installation of the Work.
- c. The Design shall be submitted to the Stakeholder Committee for review and comment and the Design shall not be deemed complete unless and until the head of the Commissioning Agency for which it was designed approves it.
- d. The Design shall be submitted to the Atlanta Urban Design Commission for Review and Comment.

1.2 Process of Performance, Review, and Acceptance of Services

- a. Within two weeks after the execution of this Agreement or as otherwise agreed upon in writing by the Director of the Bureau of Cultural Affairs, the Artist shall perform such reasonable site inspections, interviews, and research as may be necessary, to complete the Design. The City shall make available to the Artist, blueprints and photographs related to the Site, information related to the installation of the Work and where applicable, a written set of requirements and specifications for the Work and the plans for the underlying capital project of which the Work will be a part (the "Project").
- b. The Artist shall participate in any necessary meetings regarding the Design and/or the Work, including but not limited to meetings with members of the Bureau of Cultural Affairs, members of the Stakeholders Committee and members of the Atlanta Urban Design Commission. It is the intent of the Parties that the Artist and the City establish a close and cooperative consultation relationship throughout the duration of this Agreement.



Within thirty - (30) days of the execution of the Agreement, the Artist shall prepare and submit to the City the Design. The Design must include the following:

1. A general overall description of the Work specifying such materials, dimensions, weight, finish, preliminary maintenance recommendations and proposed installation method.
2. Illustration(s) that depicts the entire Work in relation to the Site, including the architecture of the Site. If several locations are involved, illustrations should be submitted for each location. The illustration(s) should include the dimensions, materials, weight, colors, finish, and proposed installation method of the Work.
3. A drawing or drawings that include details of the Work, with the appropriate information on the manner of installation. The Artist may also submit other documents and models as required to present a meaningful representation of the concept of the Work.
4. Materials samples for the Work, including but not limited to building materials.
5. A written statement no longer than two (2) pages that includes the following information about the Work:
 - (a.) Location
 - (b.) Dimension
 - (c.) Materials
 - (d.) Intent or what is being conveyed in the Work
 - (e.) Budget
 - (f.) Fabricator's name (if applicable)
 - (g.) Preliminary maintenance recommendations and maintenance specifications

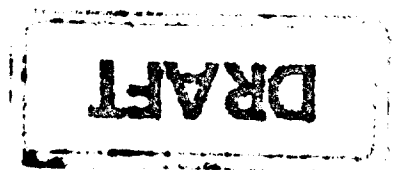
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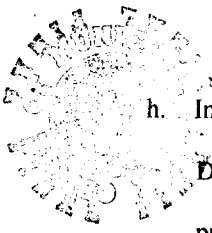
- d. The Stakeholders Committee selected for the Project shall review the Design and shall notify the Artist in writing through the Bureau of Cultural Affairs, within fourteen (14) days of receipt of the Design regarding whether the City requires changes to, or rejects the design. The Stakeholders Committee shall provide the Artist with written, detailed explanation for the decision.

1. If the Design varies significantly from the Preliminary Design, as determined by the City, the City may require that the Artist make changes to the Design. In the event that the Design varies significantly from the Preliminary Design, as determined by the City, the City also reserves the right to reject such changes and to



- terminate the Agreement at this point, immediately, without providing any opportunity to cure. The thirty-(30) day cure period provided in the Termination section below, Article 8, shall not apply to this section.
2. The City may require the Artist to make revisions to the Design as are necessary for the Work to comply with applicable status, ordinances of any governmental body or regulatory agency having jurisdiction over the Work or the Project.
 3. The City may require revision of the Design for practical, non-aesthetic reasons.
 4. The City may request any other changes to the Design for any reason.
- e. In the event that the City does not accept the Design, it shall determine whether the Design contains minor problems or major problems.
1. The Artist shall be given an opportunity to revise the Design to resolve what the City determines are minor problems with the Design. The Artist shall submit a revised Design within a reasonable period of time as specified in writing by the Stakeholders Committee.
 2. If the City determines that the Design has major problems and the City requires the Artist to change the Design, the Artist shall be afforded an opportunity either to submit a revised Design within a reasonable period of time as specified in writing by the Stakeholders Committee, or terminate this Agreement. In the event that the Artist chooses to terminate this agreement, the agreement shall terminate upon the receipt of such written notice from the Artist, and the thirty (30) day cure period provided in the Termination section below, Article 8, shall not apply.
- f. At any time during the Stakeholder Committee review of the Design, including the revised Design, the artist shall be available at such time or times as may be agreed to by the City and the Artist to attend presentation meetings relating to the Design. In specified cases, expenses related to meeting attendance shall be provided for artists residing outside of Atlanta, and shall cover travel and hotel costs, and a fixed per diem for food and in-town transportation.
- g. Within fourteen (14) days following receipt of the revised Design from the Artist the Stakeholders Committee shall review the Design and shall notify the Artist in writing regarding whether the City accepts the Design (the "Accepted Design") or rejects the Design. If the City rejects the Design, it shall provide the Artist with a written statement of its reasons for disapproval, whereupon this Agreement shall terminate immediately, without any cure period. The thirty (30) -day cure periods in the Termination section below, Article 8, shall not apply to this section.





h. In the event of termination of this Agreement pursuant to paragraph (d2) or (g) above, the Artist shall retain the Design, neither Party shall be under any further obligation to the other with respect to this Agreement and the provisions set forth in the Termination section below, Article 8, shall not apply.

f In the event of termination of this Agreement pursuant to paragraph (f), the Artist shall retain the Proposal, and neither party shall be under any further obligation to the other in respect the subject matter thereof.

1.3 Time Extensions

The City shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the City in performing its obligations under this Agreement or in completing the Project, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either Party's reasonable control will not be considered a breach of his Agreement provided that such obligations shall be suspended only for the duration of such conditions.

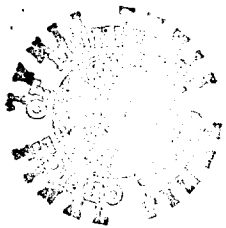
1.4 Indemnity.

a The Artist agrees to indemnify and hold harmless the City, its officer's agents and employees, from any and all losses, expenses demands and claims against the City, its officers, agents and employees, sustained or alleged to have been sustained in connection with or to have arisen out of or resulting from the performance of this Agreement by or under the direction of the Artist or any Sub-Contractor employed by the Artist, or any of her/his their officers, agents or employees. This indemnification provision shall include but not be limited to any and all losses, expenses, demands and claims from allegations of copyright and/or trademark infringements. This paragraph 1.4 shall survive any termination or expiration of this Agreement.

1.5 Ownership of Design and Other Submissions.

Upon the City's final acceptance of the Design, the Accepted Design plus, all studies, drawings, previous drafts of the Designs, maquettes and models and any other item or document prepared and submitted to the City pursuant to this Agreement (hereinafter "Submissions") shall become the property of the City. The City acknowledges that the Accepted Design and the Submissions will remain in the possession of the Bureau of Cultural Affairs, and will be used for the sole purpose of completing, installing, constructing and/or creating the Work. This paragraph 1.5 shall survive any termination or expiration of this Agreement.

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1.6 Title.

The City shall possess title to the Accepted Design and the Submissions upon the City's final acceptance of the Design and payment in full to the Artist. This paragraph 1.6 shall survive any termination or expiration of the Agreement.

ARTICLE 2. PAYMENT

The City shall pay the Artist a *Fixed Fee* of \$35,000, which shall constitute full compensation for all services and materials to be performed and furnished by the Artist under this Agreement. This fee shall represent total compensation for all services performed or required to be performed by this contract, regardless of any circumstances, which may not be foreseen at this time of the execution of this contract. The fee shall be paid in the following installments, each installment to represent full and final, non-refundable payment for all services and materials provided prior to the due date therefore

- (a) The City shall pay the Artist \$11,667 upon execution of this agreement
- (b) The City shall pay the Artist \$11,667 upon the City's acceptance of the Design.
- (c) The City shall pay the Artist \$11,666 within (30) days after the final inspection of the installation of the Work.

ARTICLE 3. TIME OF PERFORMANCE

This Agreement shall be effective as of the date written in the first paragraph of this Agreement, and shall terminate upon the City's acceptance of the Design and payment to the Artist in full.

ARTICLE 4. WARRANTIES

4.1 Warranties of Title.

The Artist represents and warrants that:

- (a) Except as otherwise disclosed in writing to the City, the Accepted Design and all of the Submissions are unique and original and do not infringe upon any copyright or trademark;
- (b) Neither the Accepted Design nor any of the Submissions, nor a duplicate of any or all of these has been accepted for sale elsewhere;
- (c) The Accepted Design and all of the Submissions are free and clear of any liens from any source whatsoever.





(d) S/he will require each and every subcontractor who labors on the Work and/or on any of the Submissions, to sign an affidavit identifying which items the subcontractor performed work on, and asserting the veracity of the three warranties above with regard to the Accepted Design and/or the Submissions on which the subcontractor worked, to the best of her/his knowledge. The Artist will provide the original Affidavit to the Bureau of Cultural Affair.

ARTICLE 5. REPRODUCTION RIGHTS

5.1 General.

The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. §§ 101 et seq., and all other rights in and to the Work and the Submissions, except ownership and possession. In view of the intention that the Work in its final dimension shall be unique, the Artist shall not make any exact duplicate, or two dimensional or three dimensional reproductions of the Accepted Design, the Submissions, or the Work, nor shall the Artist grant permission to others to do so without the written permission of the City. The Artist grants to the City and its assigns an irrevocable license, at no charge, to make reproductions, including but not limited to two – dimensional and/or three-dimensional reproductions of the Accepted Design and/or any of the Submissions or the Work for purposes of producing postcards, advertising, brochures, media publicity, and catalogues or other similar publications for the promotion of the City, including but not limited to the Department of Parks, Recreation and Cultural Affairs.

5.2 Notice

All reproductions by the City of the Accepted Design and/or any of the Submissions or the Work shall contain a credit to the Artist and a copyright notice substantially in the following form: Copyright ©, date of publication.

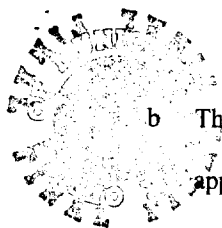
5.3 Credit to City

The Artist shall use his/her best efforts to give a credit reading substantially: “an original work commissioned by the City of Atlanta, Department of Parks, Recreation and Cultural Affairs” in any public presentation or reproductions of the Accepted Design or any of the Submissions of the Work.

5.5 Alteration of the Work

- a The City agrees that it will not intentionally damage, alter, modify or change the Work.





- b The City shall notify the Artist of any proposed alteration of the site that would affect the intended character and appearance of the Work and shall take into consideration the Artist's concerns in the planning and execution of any such alteration and shall make a reasonable effort to maintain the integrity of the Work.

5.5 Records

The City shall maintain a record of this Agreement and of the location and disposition of the Work at the Bureau of Cultural Affairs.

5.6 Artist's Address.

The Artist shall notify the City of changes in his/her address as is listed in the first paragraph of this Agreement. . The failure to do so, if such failure prevents the City from locating the Artist, shall be deemed a waiver by the artist of the right subsequently to enforce those provisions of this Agreement, including but not limited to this Article 5, that require notice to and/or express approval of the Artist. Notwithstanding this provision, the City shall make every reasonable effort to locate the Artist when matters arise relating to the Artist's rights.

5.7 Surviving Covenants.

The covenants and obligations set forth in this Article 5 shall be binding upon the Parties, their heirs, legatees, executors, administrators, assigns, transferees and all their successors in interest, and the City's covenants do attach to and run with the Work and shall be binding to and until twenty (20) years after the death of the Artist. However, the obligations imposed upon the City by Sections 7.1(a) and 7.4 shall terminate on the death of the Artist. The City shall give any subsequent owner of the Work notice in writing of the covenants herein, and shall cause each such owner to be bound thereby.

5.8 Additional Rights and Remedies.

Nothing contained in this Article 7 shall be construed as a limitation on such other rights and remedies available to the Artist under the law, which may now or in the future be applicable.

5.9 Effectiveness Beyond Agreement Termination

All of the content of this Article 5 shall survive any termination or expiration of this Agreement.

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ARTICLE 6. ARTIST AS INDEPENDENT CONTRACTOR

The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City nor shall the Artist exercise supervision over any employee or official of the City.

ARTICLE 7. ASSIGNMENT, TRANSFER, SUBCONTRACTING

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7.1 Assignment or Transfer of Interest.

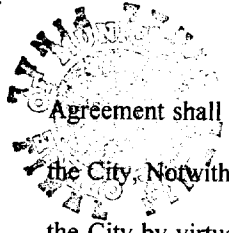
The Artist shall not assign or transfer any interest in this Agreement, provided, however, that the Artists claims for money due from or to become due from the City under this Agreement may be assigned to a financial institution upon written notice to the Commissioner of the Department of Parks, Recreation and Cultural Affairs.

7.2 Subcontracting by Artist.

The Artist may subcontract portions of the services to be provided hereunder at the Artist's expense provided that said subcontracting shall not affect the design, appearance or visual quality of the Work, shall be carried out under the personal supervision of the Artist, and the intention to subcontract shall be provided in writing to the City. In addition, the Artist must submit to the City any and all Subcontractor Warranty Affidavits, as described in Article 4.1 (d) above.

ARTICLE 8. TERMINATION

If either Party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner or shall otherwise violate, any of the covenants, agreements or stipulations material to this Agreement, the other Party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting Party of its intent to terminate specifying the grounds for termination and the specific steps that must be taken to cure the default. The defaulting Party shall have (30) days after receipt of the notice to cure the default unless the default arises as described in Article 1.2 subsection (d)(1), (e)(2), or (g) above. If it is not cured, as shall be determined by the non-defaulting Party, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist pursuant to Article 2. for all services performed by the Artist prior to termination. In the event of default by the Artist, all Submissions, and all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this



Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Work shall pass to the City. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist. In addition, in the event that this Agreement terminates as a result of Artist default the Artist will be ineligible to participate in future Bureau of Cultural Affairs Public Art Programs for a minimum of three (5) years. This content of this Article 8 shall not apply to Article 1.2 subsection (h) above.

ARTICLE 9. COMPLIANCE

The Artist shall be required to comply with Federal, State and City statutes, ordinances and regulations applicable to the performance of the Artist's services under this Agreement.

ARTICLE 10. ENTIRE AGREEMENT

This writing embodies the entire agreement and understanding between the Parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

ARTICLE 11. MODIFICATION

No alteration, change or modification of the terms of the Agreement shall be valid unless made in writing and signed by both Parties hereto and approved by appropriate action of the City.

ARTICLE 12. WAIVER

No waiver of performance by either Party shall be construed as or operate as a waiver of any subsequent default of any terms, covenants and conditions of this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right or acceptance of defective performances.

ARTICLE 13. GOVERNING LAW AND VENUE

This Agreement, regardless of where executed or performed, shall be governed by and construed in accordance with the laws of the State of Georgia. Venue shall be deemed to be proper in the Fulton Superior Court for the State of Georgia and if applicable the U.S. District Court for the Northern District of Georgia, Atlanta Division.

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ARTICLE 14. HEIRS AND ASSIGNS

This Agreement shall be binding upon and shall inure to the benefit of the City and the Artist and their respective heirs, personal representatives, successors and permitted assigns.

ARTICLE 15. ARBITRATION

All disputes or controversies that may arise between the Parties with respect to the performance of or the obligations or rights emanating from this Agreement, or the alleged breach thereof, shall be settled by binding arbitration. The dispute shall be referred to a panel of three arbitrators, one to be selected by the Artist, one to be selected by the City and the third to be selected by the first two. If an agreement on the third arbitrator cannot be reached within thirty - (30) days after the appointment of the second arbitrator, such third arbitrator shall be appointed by a respected arts administrator to be agreed upon by both the City and the Artist. The decision and award of the arbitrators, or that of any two of them, shall be final and binding on the Parties, and judgment may be entered upon it in any court having jurisdiction thereof.

ARTICLE 16. NOTICES

All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

a. If to the City:

Office of the Commissioner
Department of Parks, Recreation and Cultural Affairs
675 Ponce de Leon Avenue
Atlanta, Georgia 30308

b. If to the Artist, at the address previously written with copies to:

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IN WITNESS WHEREOF, the City by and through its duly authorized officers and the Artists, have executed this Agreement as of the date first written above.

ATTEST:

CITY OF ATLANTA:

Municipal Clerk

Mayor (Seal)

ATTEST:

ARTIST:

Notary Public

APPROVED AS TO INTENT

RECOMMENDED:

Commissioner, Department,
of Parks Recreation and Cultural Affairs

Chief Operating Officer

DRAFT

01-0-0995

(Do Not Write Above This Line)

AN ORDINANCE

Community Development/Human Resources Committee

An Ordinance to adopt the "City of Atlanta Public Arts Master Plan" and to amend Part 10, Chapter One, Sections 10-1005, 10-4004, 10-4005, 10-4006, 10-4007 and 10-4009 of the City of Atlanta Code of Ordinances so as to adopt and implement the recommendations of said report; to establish a Public Art Organizational structure; to establish a gift policy and an De-accessioning Policy for Public Works of Art; to increase the 1% for the Public Art Fund to repeal conflicting ordinances; and for other purposes

ADOPTED BY
JUL 16 2001

COUNCIL

Substitute As Amended

- ☒ CONSENT REFER
- ☐ REGULAR REPORT REFER
- ☐ ADVERTISE & REFER
- ☐ 1st ADOPT 2nd READ & REFER
- ☐ PERSONAL PAPER REFER

Date Referred

7/2/01

Referred To:

Community Development/Human Resources

Date Referred

Referred To:

Date Referred

Referred To:

Committee CD/HR First Reading
Date 7/2/01
Chair CD/HR
Referred to CD/HR

CD/HR

7/1/01

Chair

[Signature]

Action:

Fav, Adv, Hold (see rev. side)

[Signature]

Members

[Signature]

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

[Signature]

[Signature]

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

[Signature]

[Signature]

Refer To

FINAL COUNCIL ACTION

☒ 2nd ☐ 1st & 2nd ☐ 3rd

Readings

☒ Consent ☐ V Vote ☐ RC Vote

CERTIFIED

CERTIFIED
JUL 16 2001

ATLANTA CITY COUNCIL PRESIDENT

[Signature]

CERTIFIED
JUL 16 2001

ATLANTA CITY COUNCIL CLERK

[Signature]

MAYOR'S ACTION

APPROVED

JUL 2 2001

MAYOR

[Signature]



**CITY COUNCIL
ATLANTA, GEORGIA**

01-0-0995

A SUBSTITUTE ORDINANCE
BY COMMUNITY DEVELOPMENT / HUMAN RESOURCES COMMITTEE

AN ORDINANCE TO ADOPT THE "CITY OF ATLANTA PUBLIC ART MASTER PLAN" AND TO AMEND (PART 1 CHARTER AND RELATED LAWS, SUBPART A, APPENDIX IV, SECTION 33, CHAPTER 110, ARTICLE II, SECTION 110.38, CHAPTER 46 ARTICLE III SECTIONS 46-76, 46-77, 46-78, 46-79, 46-80, 46-81, 46-82 OF THE CITY OF ATLANTA CODE OF ORDINANCES SO AS TO ADOPT AND IMPLEMENT THE RECOMMENDATIONS OF SAID REPORT; TO ESTABLISH A PUBLIC ART ORGANIZATIONAL STRUCTURE; TO ESTABLISH A GIFT POLICY AND A DEACCESSIONING POLICY FOR PUBLIC WORKS OF ART; TO INCREASE THE 1% FOR ART TO 1.5%; TO REPEAL CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES

WHEREAS, the City of Atlanta commissioned a comprehensive Public Art Master Plan in 1994 to assess the current status of public art in Atlanta and to guide Atlanta's future art initiatives through the 1996 Olympic Games, and

WHEREAS, in April of 1999 a task force was convened to review and update the initial Public Art Master Plan to determine how the plan would meet the needs of a growing Atlanta, and

WHEREAS, a number of recommendations to strengthen the existing plan were identified with public participation and a revised Public Art Master Plan followed in 2001, and

WHEREAS, the Bureau of Cultural Affairs has submitted a comprehensive report entitled "City of Atlanta Public Art Master Plan" (hereafter, Plan) to develop a new approach to public art in Atlanta, building on the strengths of the existing ordinance, the initial plan commissioned by the Project for Public Spaces, Inc. and the recommendations from the Public Art Master Plan task force, setting forth a series of policy measures, processes and procedures that will enable the City to fulfill its public art objectives, and

WHEREAS, the Public Art Master Plan calls for the establishment of a Public Art Advisory Committee to assist the Bureau of Cultural Affairs and the Department of Aviation's Airport program in defining the direction of public art in Atlanta, and

WHEREAS, the Public Art Master Plan has identified the need for standardized procedures for careful review process regarding the acceptance of gifts of public art, including review of artistic merit, site appropriateness, city liability, and cost of maintenance, as well as policy for the de-accessioning of public art, and

WHEREAS, the city of Atlanta's Public Art programs will be enhanced by the ability to implement public art projects through the use of pooled funds, the use of temporary installations and project-specific works of public art, and



WHEREAS, the many works of art in need of restoration and/or maintenance will benefit from a recommended increase of .5% to be allocated into a maintenance and conservation program for works of public art; and

WHEREAS, the Mayor has reviewed the Plan and recommend that the Council adopt said Plan; and

WHEREAS, the adoption of the Plan and the implementation of the Plan's recommendations require amendments to existing ordinances governing public art in Atlanta,

NOW BE IT HEREBY ORDAINED BY THE COUCIL OF THE CITY OF ATLANTA, GEORGIA as follows:

SECTION 1: The Council hereby adopts the "City of Atlanta Public Art Master Plan", a copy of which is attached to this ordinance, as a guide for the development and implementation of a comprehensive approach to public art in the City of Atlanta, and authorizes the Bureau of Cultural Affairs and the Department of Aviation to implement the policies and programs substantially in the form contained therein, including but not limited to:

- (1) An increase in the percent for art ordinance to 1.5%;
- (2) Establishment of a Public Art Advisory Committee (PAAC) to act as an ongoing advisory group to the City's public art programs. Appointed citizens of an approximately nine-member advisory committee selected by the Bureau of Cultural Affairs, will review gifts of public art and commissions, and advise on the overall public art plan. Members will serve two-year terms either consecutive or nonconsecutive.
- (3) Establishment of a formal Gift Policy and a formal De-accessioning Policy;
- (4) Reservation of twenty (20) percent of all percent for art funds for the purpose of funding maintenance and program administration for the purpose of documentation and conservation of art works, community outreach and public education, developing an annual municipal arts plan for the review and approval of city council, fund development, managing the public art program, organizing and maintaining a Public Art Idea Bank, and other duties as recommended in the Public Art Master Plan.

SECTION 2. , that Part 1 Charter and Related Laws, Subpart A, Appendix IV, Section 33 and Chapter 110, Article II, Section 110.38, "functions and duties of the Bureau of Cultural Affairs" is hereby amended by adding a new subsection (7) as follows:

- (7) Developing policies and procedures to implement the Public Art Master Plan

SECTION 3. Chapter 46, Article III Sec. 46-77, "Works of Art in Public Places; policy" hereby amended by adding the following sentence:

The City of Atlanta Public Art Master Plan shall guide the development, administration and maintenance of public art in Atlanta.



SECTION 4. Chapter 46, Article III Sec.46-76, "Same; definitions" is hereby amended as follows:

Construction project means any capital project, including but not limited to those paid wholly or in part by the city with voter non school general obligation bonds, annual general obligation non school bonds, public grants except where prohibited, park improvement funds, revenue bonds and general funds, for the purpose of constructing or remodeling any building, decorative or commemorative structure, park, street, sidewalk, parking facility or utility or any portion thereof within the City of Atlanta.

- (b) *Eligible funds means funds which pay for actual construction costs. This excludes funds which pay for engineering, architecture, acquisition, land acquisition and interest costs, as well as any incidental costs not associated with construction. Further, it refers only to that portion of public funds, which come from sources other than general obligation school bonds, private grants (except where expressly stated in the conditions of the grant itself) and assessment programs.*
- (c) *Municipal art account means the account within each eligible fund in which one and one half percent (1.5%) of all eligible funds for construction projects are deposited each year, and of which 80% shall be expended on the selection, design and development of works of public art, and 20% reserved for maintenance of works of public art and arts administration by the Bureau of Cultural Affairs (BCA). BCA shall be the administrator of all municipal arts accounts and have sole expenditure authority on said accounts.*
- (d) *Municipal art plan means an annual plan developed and administered by the Bureau of Cultural Affairs for the aesthetic enhancement of all capital construction projects paid for by eligible funds in a particular year.*

SECTION 5. Chapter 46, Article III Sec. 46-78, "Same; funds for works of art" is hereby amended as follow:

All request for appropriations for construction projects from eligible funds as defined in Section 46-76 shall include the encumbrance of an amount equal to one and one-half (1.5) percent of the estimated cost of such projects for public works of art and shall be accompanied by contractual requirements authorizing the Bureau of Cultural Affairs to expend such funds after the same have been deposited in a municipal arts account. When any such request for construction projects is approved, the appropriation for such construction projects shall be made and shall include an appropriation of funds for works of art, at the rate of one and one-half (1.5) percent of project costs to be deposited into the municipal arts account as a line item in each fund. Money identified by each bureau, or agency for its public art percentage program shall be expended for payees as prescribed by the municipal arts plan, as provided in section 46-79(2).

SECTION 6. Chapter 46, Article III Sec. 46-79, "Same; Authority of the Bureau of Cultural Affairs" is hereby deleted in its entirety and substituted therefore by the following:

- (1) *Prepare for review by the Mayor and Council, a municipal arts plan which shall outline the expenditure of funds from the municipal arts account(s). Such plan shall include, but not be limited to, the methods(s) of commissioning artists, specific locations and expenditures for specific works of art, and maintenance and administration of the public arts program;*
- (2) *Cause the municipal arts plan to be an integral part of the office's recommendations with regard to the city's comprehensive development plan and the capital improvement plan;*



(3) Bring to the attention of the city council any proposed work of art requiring extraordinary operation or maintenance expenses;

(4) Recommend the placement of works of art consistent with section 46-81;

(5) Make recommendations regarding artist(s) selections without regard to an individual's or the perception of an individual's race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, disability, or the use of a trained dog guide by a blind, deaf or otherwise physically disabled person;

(6) Make recommendations to the council as to the amount of money required in advance to carry out contracted projects by artist(s); the amount advanced shall not exceed one third of the total allocable to such artist(s) for the contracted work of art and shall be approved by the council and mayor prior to payment; and

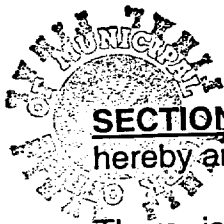
(7) Review prior to final payment all works in order to report on the conformity of the finished work with the approved plans or other document describing the work of art to be carried out.

(8) Approve all expenditures from municipal arts accounts of which eighty (80) percent shall be expended on the design, selection and development of works of public art, and twenty (20) percent shall be expended on maintenance and administration of the public art program.

(9) Develop procedures for implementation of the policy governing the acceptance of gifts of public art to the City and the policy governing the process for the de-accessioning of public art.

(10) Establish guidelines for and recommend the appointment of a Public Art Advisory Committee comprised of representatives from the business community, the arts community and the citizens of Atlanta, to advise and assist the Bureau of Cultural Affairs on matters regarding the implementation of public art policies for Atlanta.

(11) Review and approve all capital construction projects for compliance with the percent for art section of the Code of ordinances, and determine if said percent for art funds shall be utilized on or about a specific project, or pooled with other funds for larger public arts projects located within the city of Atlanta, with the assistance of the Public Art Advisory Committee.



SECTION 7. Chapter 46, Article III Sec. 46-81, "Same; Account and payments" is hereby amended as follows:

There is established a special account within each eligible fund designated the "municipal arts account into which funds are appropriated as contemplated by Section 46-78 and 46-79 hereof shall be deposited. Each disbursement from such account (s) or from other appropriations for works of arts shall be approved by the Bureau of Cultural Affairs, as authorized by the city council. Twenty percent (20%) of each municipal arts account shall be reserved for the administration and maintenance of works of public art by the Bureau of Cultural Affairs.

SECTION 8. That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

Ordinance Draft / Created on 06/13/01
Public Art Master Plan

Page 5 of 5

A true copy,

Phonda Daughkin Johnson
Municipal Clerk, CMC

ADOPTED as amended by the Council
APPROVED by the Mayor

JUL 16, 2001
JUL 24, 2001

RCS# 3022
7/16/01
6:21 PM

Atlanta City Council

Regular Session

01-O-0995

Adopt "City of Atlanta Public Art Master
Plan"

ADOPT/SUB/AMEND

YEAS: 13
NAYS: 1
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 0
ABSENT 1

| | | | |
|-----------|-----------|-----------|-------------|
| Y McCarty | Y Dorsey | Y Moore | Y Thomas |
| Y Starnes | Y Woolard | Y Martin | Y Emmons |
| Y Bond | B Morris | Y Maddox | N Alexander |
| Y Winslow | Y Muller | Y Boazman | NV Pitts |

01-O-0995

RCS# 6751
6/20/05
3:36 PM

Atlanta City Council

Regular Session

CONSENT I

CONSENT I PG(S) 4-21 05-R-1086 05-R-1084
05-O-0972 05-R-1093 05-O-0906 05-R-0905
ADOPT

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 0
ABSENT 2

| | | | |
|-----------|-------------|-----------|------------|
| Y Smith | Y Archibong | Y Moore | Y Mitchell |
| Y Starnes | Y Fauver | Y Martin | Y Norwood |
| Y Young | B Shook | B Maddox | Y Willis |
| Y Winslow | Y Muller | Y Sheperd | NV Borders |

CONSENT I

| | | 6/20/05 |
|-----------------------------|-----------------------------|------------------------------|
| ITEMS ADOPTED ON CONSENT | ITEMS ADOPTED ON CONSENT | ITEMS ADVERSED ON CONSENT |
| 1. 05-O-1075 | 31. 05-R-1069 | 55. 05-R-1023 |
| 2. 05-O-1076 | 32. 05-R-1072 | 56. 05-R-1024 |
| 3. 05-O-1078 | 33. 05-R-0903 | 57. 05-R-1025 |
| 4. 05-O-1101 | 34. 05-R-1062 | 58. 05-R-1026 |
| 5. 05-O-1102 | 35. 05-R-1063 | 59. 05-R-1027 |
| 6. 05-O-1103 | 36. 05-R-1064 | 60. 05-R-1028 |
| 7. 05-O-1089 | 37. 05-R-1054 | 61. 05-R-1029 |
| 8. 05-O-1099 | 38. 05-R-1055 | 62. 05-R-1030 |
| 9. 05-O-0904 | 39. 05-R-1056 | 63. 05-R-1031 |
| 10. 05-O-0910 | 40. 05-R-1057 | 64. 05-R-1032 |
| 11. 05-O-0911 | 41. 05-R-1073 | 65. 05-R-1033 |
| 12. 05-O-0912 | 42. 05-R-1074 | 66. 05-R-1034 |
| 13. 05-O-0916 | 43. 05-R-1108 | 67. 05-R-1035 |
| 14. 05-O-0968 | 44. 05-R-1116 | 68. 05-R-1036 |
| 15. 05-O-0976 | 45. 05-R-1117 | 69. 05-R-1037 |
| 16. 05-O-1080 | 46. 05-R-0819 | 70. 05-R-1038 |
| 17. 05-O-0981 | 47. 05-R-1043 | 71. 05-R-1039 |
| 18. 05-O-0982 | 48. 05-R-1044 | 72. 05-R-1040 |
| 19. 05-O-1085 | 49. 05-R-1047 | 73. 05-R-1041 |
| 20. 05-O-1104 | 50. 05-R-1049 | 74. 05-R-1042 |
| 21. 05-O-1105 | 51. 05-R-1019 | |
| 22. 05-O-1106 | 52. 05-R-1020 | |
| 23. 05-O-0960 | 53. 05-R-1021 | |
| 24. 05-O-0961 | 54. 05-R-1022 | |
| 25. 05-R-1060 | | |
| 26. 05-R-1061 | | |
| 27. 05-R-1077 | | |
| 28. 05-R-1098 | | |
| 29. 05-R-1067 | | |
| 30. 05-R-1068 | | |

LARGE ATTACHMENT:

DOCUMENT(S),

MANUAL(S)

OR

MAP(S)

NOT COPIED,

PULL ORIGINAL

FOR COPY OR TO VIEW

05-P-1064

(Do Not Write Above This Line)

RESOLUTION BY COMUNITY DEVELOPMENT/
HUMAN RESOURCES COMMITTEE

RESOLUTION AUTHORIZING THE MAYOR TO ENTER
INTO AN APPROPRIATE CONTRACTUAL AGREEMENT
WITH THE ARTIST JOSEPH PERAGINE FOR THE
PURPOSE OF COMMISSIONING ARTWORK OF THE
ARTIST'S OWN DESIGN FOR THE ATLANTA CITY
COURT, PHASE II, IN AN AMOUNT NOT TO
EXCEED \$35,000.00, ON BEHALF OF THE
DEPARTMENT OF PARKS, RECREATION AND
CULTURAL AFFAIRS, BUREAU OF CULTURAL
AFFAIRS; AND FOR OTHER PURPOSES.

ADOPTED BY

JUN 20 2005

COUNCIL

- ☐ CONSENT REFER
☐ REGULAR REPORT REFER
☐ ADVERTISE & REFER
☐ 1st ADOPT 2nd READ & REFER
☐ PERSONAL PAPER REFER

Date Referred

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee
Date
Chair
Referred to

Committee

Date

Chair

Actions

Fav, Adv, Held (see rev. slide)

Other

Members

Refer To

Committee

Date

Chair

Actions

Fav, Adv, Held (see rev. slide)

Other

Members

Refer To

Committee

Date

Chair

Actions

Fav, Adv, Held (see rev. slide)

Other

Members

Refer To

Committee

Date

Chair

Actions

Fav, Adv, Held (see rev. slide)

Other

Members

Refer To

FINAL COUNCIL ACTION

☐ 2nd ☐ 1st & 2nd ☐ 3rd

Readings

☒ Consent ☐ V Vote ☐ RC Vote

CERTIFIED

JUN 20 2005

MAYOR'S ACTION

Andy D. Smith